

**PT 04-44**

**Tax Type: Property Tax**

**Issue: Religious Ownership/Use  
Grounds for Burying the Dead**

**STATE OF ILLINOIS  
DEPARTMENT OF REVENUE  
OFFICE OF ADMINISTRATIVE HEARINGS  
CHICAGO, ILLINOIS**

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**CONCORDIA  
CEMETARY ASSOCIATION,  
APPLICANT**

**v.**

**ILLINOIS DEPARTMENT  
OF REVENUE**

**No. 03-PT-0071  
(02-16-2311)  
P.I.N: 15-14-208-053, *et al.*  
(See Appendix I)**

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**RECOMMENDATION FOR DISPOSITION  
PURSUANT TO CROSS MOTIONS FOR SUMMARY JUDGMENT**

**APPEARANCES** Mr. Brian P. Forde and Mr. Mark R. Davis of O’Keefe, Lyons & Hynes on behalf of the Concordia Cemetery Association (the “applicant”); Mr. John D. Alshuler, Special Assistant Attorney General, on behalf of the Illinois Department Of Revenue (the “Department”).<sup>1</sup>

**SYNOPSIS:** This matter comes to be considered pursuant to cross motions for summary judgment filed by the parties herein and raises the issue of whether real estate identified by the Cook County Parcel Index Numbers identified on the attached Appendix I (collectively the “subject properties”) qualify for exemption from 2002 real estate taxes under 35 ILCS 200/15-45. The underlying controversy arises as follows:

The Applicant filed a Real Estate Tax Exemption Complaint with the Cook County Board of Review (the "Board"), which after of its review of this matter,

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1. The applicant and the Department shall hereinafter be referred to in the collective as “the parties.”

recommended that the subject properties be exempt as of September 13, 2002. The Department, however, rejected the Board's recommendation via its initial determination herein, dated September 11, 2003, which denied all of the requested exemptions *in toto* on grounds that the subject properties were not in exempt ownership and not in exempt use.

The applicant filed a timely appeal to this denial and later arrived at a Stipulation of Facts with the Department. Following submission of that Stipulation, the applicant filed a motion for summary judgment, to which the Department filed a cross motion for summary judgment and the applicant filed a reply. Following a careful review of the Stipulation, the cross motions for summary judgment and the reply, I recommend that the Department's initial determination in this matter be affirmed. Therefore, the applicant's motion for summary judgment should be denied and the Department's cross motion for summary judgment should be granted.

**FINDINGS OF FACT:**

1. The Department's jurisdiction over this matter and its position therein are established by the determination issued by the Office of Local Government Services on September 11, 2003.
2. The Department's position in this matter, as reflected in that determination, is that the subject properties are not in exempt ownership and not in exempt use.
3. The parties have stipulated to the following relevant facts:
  - A. The applicant is a not for profit cemetery association that is operated by a consortium of six churches. Stipulation ¶1;

- B. The applicant owns and operates Concordia Cemetery (the “Cemetery”), which is located in Forest Park, Illinois. Stipulation ¶2;
- C. The Department has exempted from real estate taxation other properties that the applicant owns and uses in connection with its operation of the Cemetery. Stipulation ¶¶5, 6;
- D. The subject properties are located adjacent to other Cemetery properties that have been determined to be tax exempt. Stipulation ¶6;
- E. The applicant obtained ownership of the subject properties by means of a quitclaim deed dated September 13, 2002. Stipulation ¶8;
- F. The subject properties were not plotted for use as burial grounds at any time after the applicant acquired ownership of them. The properties did, however, constitute open “green space” that was located on part of the Cemetery grounds. Stipulation ¶11.

**CONCLUSIONS OF LAW:**

Summary judgment is appropriate where there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law. 735 ILCS 5/2-1005(c). There are no genuine issues of material fact in this case because the parties have stipulated to all of the relevant facts. Therefore, the issue for decision herein necessarily becomes one of law. Evangelical Alliance Mission v. Department of Revenue, 164 Ill. App.3d 431, 439 (2<sup>nd</sup> Dist. 1987).

Article IX, Section 6 of the Illinois Constitution of 1970 provides as follows:

The General Assembly by law may exempt from taxation only the property of the State, units of local government and school districts and property used exclusively for

agricultural and horticultural societies, and for school, religious, cemetery and charitable purposes.

Pursuant to its Constitutional mandate, the General Assembly enacted Section 15-45 of the Property Tax Code, 35 **ILCS** 200/1-1 *et seq.* Prior to the enactment of Public Act 92-733, effective July 25, 2002, Section 15-45 stated, verbatim, that “all property used exclusively as graveyards or grounds for burying the dead is exempt.” 35 **ILCS** 200/15-45. However, through enactment of Public Act 92-733, the General Assembly amended Section 15-45 to provide as follows:

Sec. 15-45. Cemetery purposes. All property used exclusively for cemetery purposes is exempt. Property used exclusively for cemetery purposes includes cemetery grounds and improvements such as offices, maintenance buildings, mausoleums, and other structures in which human or cremated remains are buried, interred, entombed, or inurned and real property that is used exclusively in the establishment, operation, administration, preservation, security, repair, or maintenance of the cemetery.

Public Act 92-733, passed May 15, 2002, effective July 25, 2002.

Statutes exempting property from taxation are to be strictly construed against exemption, with all facts construed and debatable questions resolved in favor of taxation. People Ex Rel. Nordland v. Home for the Aged, 40 Ill.2d 91 (1968); Gas Research Institute v. Department of Revenue, 154 Ill. App.3d 430 (1st Dist. 1987). The primary debatable question at issue in this case is whether the amendment to Section 15-45, effectuated by enactment of Public Act 92-733, applies in this case. For the following reasons, I conclude that it does, but only for the 30% of the 2002 assessment year occurring on or after September 13, 2002.

In situations where the same entity retains ownership of real estate both prior to and after the effective date of an amendment to an exemption statute, that entity is not

entitled to receive the benefit of any changes made by the amendment because its liability for real estate taxation became fixed as of January 1 of the tax year for which it is seeking an exemption. 35 **ILCS** 200/9-175;<sup>2</sup> Forest Preserve District of DuPage County v. Department of Revenue, 266 Ill. App.3d 264, 272 (2<sup>nd</sup> Dist. 1994). This case, however, does not present a situation where the same entity owned the property *both* prior to and after the effective date of the amendment. Rather, it presents a very different situation because the applicant did not obtain ownership of the subject properties until September 13, 2002, a date that occurred *after* Public Act 92-733 became effective on July 25, 2002.

Section 9-195 of the Property Tax Code, states, in relevant part, that:

... when a fee simple title or lesser interest in property is purchased, granted, taken or otherwise transferred for a use exempt from taxation under this Code, that property shall be exempt from taxes from the date of the right of possession, except that property acquired by condemnation is exempt as of the date the condemnation petition is filed.

35 **ILCS** 200/9-195.

The applicant obtained its “right of possession” to the subject properties on September 13, 2002. The version of Section 15-45 that was in effect *on that particular date* specifically provided, in relevant part, for the exemption of properties “used exclusively in the establishment, operation, administration, preservation, security, repair, or maintenance of the cemetery.” 35 **ILCS** 200/15-45.

This provision may have clarified that the “cemetery purposes” contemplated by Section 15-45 are not necessarily limited to those immediately associated with the internment of human remains. *See, e.g. Rosehill Cemetery v. Kern*, 147 Ill. 483 (1893)

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2. Section 9-175 of the Property Tax Code states, in relevant part, that “[t]he owner of property on January 1 in any year shall be liable for the taxes of that year...[.]”. 35 **ILCS** 200/9-175.

(property that was plotted for, but not actually used as, grounds for interring the dead held non-exempt). It did not, however, remove the long-standing requirement of Illinois exemption law that the property must, in fact, be actually and actively used for some specifically identifiable exempt purpose. Skill Corporation v. Korzen, 32 Ill.2d 249 (1965); Comprehensive Training and Development Center v. County of Jackson, 261 Ill. App.3d 37 (5<sup>th</sup> Dist. 1994).

Here, the applicant's use of the subject properties as nothing more than "green space" was passive at best. If such passive use was sufficient to warrant exemption, then this applicant or any other party could obtain a property tax exemption simply by acquiring properties that it may never, in fact, use for purposes that would satisfy both the Constitutional and statutory requirements necessary to justify their removal from the tax rolls. *Accord*, Harrisburg-Raleigh Airport Auth. v. Department of Rev., 126 Ill. 2d 326, 342-344 (1989). This, in turn, would severely harm the overall tax base by forcing public taxing bodies to bear the increased lost revenue costs that accompany such unwarranted exemptions.

It is true that properties have been held exempt when their *active* use is one that is "reasonably necessary" to facilitate another specifically identifiable exempt use. Memorial Child Care v. Department of Revenue, 238 Ill. App.3d 985, 987 (4<sup>th</sup> Dist. 1992) (day care center that limited its enrollment strictly to children of employees who worked at a charitable hospital and its affiliated corporations held exempt); Evangelical Hospitals Corp. v. Illinois Department of Revenue, 223 Ill. App.3d 225, 231 (2<sup>nd</sup> Dist. 1992) (part of office building actually used to provide administrative services for charitable hospitals held exempt). Here, however, the applicant did not actively use the

subject properties for any purpose whatsoever, cemetery related or otherwise. Rather, its use of these properties was merely passive. For this reason, the applicant is not entitled to the property tax exemption that it presently seeks even under the broader definition of “cemetery purposes” that became effective on July 25, 2002.

The fact that the subject properties are located in direct proximity to other Cemetery properties that have been determined to be tax exempt does not alter the above conclusion because “each individual claim for exemption must be determined from the facts presented.” Methodist Old People’s Home v. Korzen, 39 Ill.2d 149, 156 (1968); Lutheran Church of the Good Shepard of Bourbonnais v. Illinois Department of Revenue, 316 Ill. App.3d 828, 834 (3<sup>rd</sup> Dist., 2000). Accordingly, for all the above stated reasons, it is the Department, and not the applicant, that is entitled to judgment as a matter of law herein. Therefore, the Department’s initial determination in this matter should be affirmed.

WHEREFORE, for all the above-stated reasons, it is my recommendation that real estate identified by the Cook County Parcel Index Numbers identified in the attached Appendix I not be exempt from 2002 real estate taxes.

Date: 9/28/2004

Alan I. Marcus  
Administrative Law Judge

**APPENDIX I**

**03-PT-0071**

**CONCORDIA CEMETARY ASSOCIATION v. IDOR**

**LIST OF PARCEL INDEX NUMBERS**

15-14-208-053  
15-14-208-054  
15-14-208-055  
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15-14-208-058  
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15-14-208-063  
15-14-208-085